

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JAMES IRVING DALE, Plaintiff, vs. KELLY TJEERDSMA, MICHAEL MEYER, REBECCA SCHIEFER, GEORGE DEGLMAN, UNKNOWN DEPARTMENT OF CORRECTIONS MEDICAL STAFF, UNKNOWN DEPARTMENT OF CORRECTIONS STAFF, ROBERT DOOLEY, TAMMY DEJONG, CORY TYLER, ANDRA GATES, MICHAEL JOE HANVEY, MIKE DOYLE, Defendants.	4:14-CV-04102-LLP ORDER ON MOTION TO COMPEL DOCKET NO. 48
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Pending is Plaintiff James Irving Dale's Motion to Compel Discovery, Docket No. 48. Mr. Dale seeks (1) copies of his medical records, and (2) copies of any emails or directives from the prison staff regarding the matter of Dale v. Dooley, CIV. 14-4003, or any other legal matter regarding Mr. Dale. Defendants have filed a response and Mr. Dale has filed his reply brief so the matter is ready for a ruling.

A. Medical Records.

In their response to the motion, defendants represent Mr. Dale has been provided copies of the requested medical records. Mr. Dale did not dispute this in his reply. This portion of the motion will be denied as moot.

B. Copies of emails or written directives.

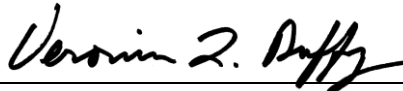
Plaintiff seeks “any and all documents, Electronic (E-Mails) Mails, or directives from any South Dakota D.O.C. staff, or MDSP staff, to any named or unnamed Defendants regarding the matter of *James Irving Dale v. Robert Dooley, et al.*, U.S.D.C. File: 14-CV-4003-LLP, or any other legal matter regarding James Irving Dale.” See Docket 50-1, p. 2. Defendants responded to Mr. Dale’s discovery request by stating “no such documents exist from South Dakota D.O.C. or MDSP staff, regarding the instant litigation, or any other legal matter regarding Plaintiff James Dale.” See Docket Nos. 50-2, p. 5 and 53-1, p. 2. In his reply brief, Mr. Dale contends there are documents responsive to the request and urges the court to order the defendants to produce the documents or, in the alternative, hold a hearing to have defendants or D.O.C. staff testing under oath that no documents exist.

Counsel for defendants has filed an affidavit indicating that he made due inquiry of his clients to determine if any emails responsive to Mr. Dale’s discovery request exist. Counsel swears, under oath, that his duly diligent inquiry yielded no responsive documents. See Docket No. 53-1. Mr. Dale’s contrary position is based on guess and conjecture. Defendants have satisfied their duty to respond to Mr. Dale’s request for documents under FED. R. CIV. P. 34. The court cannot order defendants to produce documents that do not exist. Should such documents come to light subsequent to this order, Mr. Dale would be allowed to seek sanctions against defendants. See FED. R. CIV. P. 37.

Accordingly, it is ORDERED Plaintiff James Irving Dale's Motion to Compel, Docket 48, is DENIED AS MOOT in part and DENIED in part.

DATED this 28th day of March, 2016.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Veronica L. Duffy", is written over a horizontal line.

VERONICA L. DUFFY
United States Magistrate Judge